the Act on foreign persons who wish to purchase residential property and they, not having obtained such consent cannot now claim an implied term of the purchase being subject to the minister's approval, more so when the failure to obtain such consent was of their own making; and even more so when such failure is a punishable criminal offence under s 3 of the Act read with s 36(1) of the Act.

Issue IV — Frustration

In the instant case the plaintiffs claim that the contract has been frustrated by failure to obtain the minister's approval for the purchase of the said property. Under the Act the contract we are concerned with is null and void. The question of frustration therefore does not arise. Under the Act it is for the purchasers who are foreign persons to obtain the minister's approval; the purchasers being the party in default will not be entitled to recover any sums of money paid under the contract whether it be any deposit paid by them as security for the performance of their obligations or as part payment of the purchase price.

For these reasons I dismiss the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Ramdas & Wong; YH Cheong.*

Reported by *Terence Tan Bian Chye*

Lee Kuan Yew v Devan Nair

HIGH COURT SINGAPORE — SUIT NO 1042 OF 1988
WEE CHONG JIN CJ
3 SEPTEMBER 1990

Civil Procedure — Pleadings — Particulars of defence — Striking out — Defamation — Defences of fair comment and justification — Whether particulars relevant — Rules of the Supreme Court 1970, O 18 r 19

This was a libel action brought by the plaintiff against the defendant. The plaintiff claimed that the defendant stated that the plaintiff had collaborated with foreign powers in their plans to interfere in the internal affairs of Malaysia. The defendant pleaded, inter alia, the defences of fair comment and justification and gave particulars common to both pleas. Further and better particulars were then ordered. Following this, the registrar ordered that part of the particulars and the defence be struck out under O 18 r 19 of the Rules of the Supreme Court 1970 or under the inherent jurisdiction of the court. The defendant appealed.

Held, dismissing the appeal:

(1) The defendant, in giving particulars of the facts on which he relies in support of his plea of fair comment, must clearly confine such particulars to those relevant to the issues on the pleadings.

(2) Here the defendant had set out a list of the names of the dissidents who were detained and gave statutory declarations and the types of psychological pressures against them. These particulars had no bearing on the defences against the alleged libel at all. Accordingly, the appeal was dismissed.

Cases referred to

1 *Kemsley* v *Foot* [1952] AC 345 (refd)
2 *S & K Holdings Ltd* v *Throgmorton Publications Ltd* [1972] 3 All ER 497 (refd)
3 *Polly Peck (Holdings) plc* v *Trelford* [1986] 2 All ER 84 (refd)
4 *Waters* v *Sunday Pictorial Newspapers Ltd* [1961] 2 All ER 758 (refd)

Tan Kok Quan (*Lee Han Tiong* with him) for the plaintiff.
Steven Ang (*Loh Boon Huat* and *Thio Ying Ying (Mrs)* with him) for the defendant.

Cur Adv Vult

Wee Chong Jin CJ: This is a libel action brought by the plaintiff against the defendant. The defendant pleaded, inter alia, the defences of fair comment and justification and gave particulars common to both pleas. By order of court dated 1 November 1988, further and better particulars were ordered. By order of court dated 7 April 1989, the registrar ordered that particulars (viii) under para 10 of the defence and the particulars (viii) of the further and better particulars filed on 25 November 1988 (vide order of court dated 1 November 1988) be struck out under O 18 r 19 of the Rules of the Supreme Court 1970 and alternatively under the inherent jurisdiction of the court. An appeal was brought to this court; and I dismissed the appeal. I now give my reasons.

The plaintiff is the Prime Minister of Singapore since 1959 and was a member of the Malaysian Parliament from

1963 to 1965. The defendant was the President of Singapore from October 1981 to March 1985. By the original statement of claim (since amended on 17 April 1989), the plaintiff alleged that on two separate occasions, the defendant made statements defamatory of him.

In para 3 of the statement of claim, the plaintiff alleged that on or about 22 May 1988, in the course of the BBC 24 hours programme, the defendant falsely and maliciously spoke and published and caused to be broadcast and published on radio within Singapore of and concerning him the following words defamatory of him:

> He (meaning Mr Francis Seow) did not do anything which Lee Kuan Yew and I had done with greater distinction when we were sitting on the opposition benches of the Malaysian Parliament.

In para 4 the plaintiff alleged that these words 'in their natural and ordinary meaning in the context of the said radio broadcast meant and were understood to mean that the plaintiff had collaborated and colluded with foreign powers in their plans to interfere in Malaysia's internal affairs thereby subverting the independence, integrity and sovereignty of Malaysia and, in the premises, that the plaintiff was guilty of such misconduct when he was a member of the Malaysian Parliament as would have justified his immediate arrest and detention.'

In para 5, the plaintiff alleged that on or about 22 May 1988, the defendant falsely and maliciously wrote and published or caused to be written and published in a press statement issued by or on behalf of the defendant of and concerning him and of and concerning him as a member of the Malaysian Parliament contained the following words defamatory of him:

> Other versions of the history of Singapore's brief experience as part of Malaysia tell a different story. One of them is that of Tunku Abdul Rahman, Malaysia's first Prime Minister, who told me not long ago, that he had all the facts at his disposal to warrant the arrest of Mr Lee when he was the most vociferous member of the Malaysian opposition.
>
> ...
>
> But in courting and sedulously cultivating a whole variety of foreign establishment and opposition circles, we did no more than what Mr Seow is supposed to have done in his meetings with US State Department Officials, who turned out to be rather small fry. Mr Lee courted far more powerful figures in the countries concerned.

In para 6 the plaintiff alleged that these words 'in their natural and ordinary meaning meant and were understood to mean that the plaintiff had collaborated and colluded with foreign powers in their plans to interfere in Malaysia's internal affairs thereby subverting the independence, integrity and sovereignty of Malaysia and, in the premises, that the plaintiff was guilty of such misconduct when he was a member of the Malaysian Parliament as would have justified his immediate arrest and detention.'

In his defence, the defendant alleged that the words were taken out of context; and denied that the words bear, or were capable of bearing, the meanings alleged by the plaintiff. Paragraph 5 sets out the defence of fair comment to the words in para 4 of the statement of claim in these terms:

> The said words were fair comment upon a matter of public interest, namely, upon the sufficiency of the grounds for the arrest and detention of Mr Francis Seow and upon the contents of a statutory declaration made by Mr Seow while in custody which was published and commented on by the government which the plaintiff leads and upon the attitudes and conduct of the plaintiff and his government towards those who seek to challenge their power and their policies.

Under particulars, the defendant relied upon the particulars to para 10 of the defence.

Paragraph 10 sets out the defence of fair comment to the words in para 5 of the statement of claim as follows:

> The words set out in para 5 of the statement of claim, were, in their context, a fair comment upon matters of public interest, namely, upon the sufficiency of the grounds proclaimed by the plaintiff and his government for the arrest and detention of Mr Francis Seow, and upon the plaintiff's attempt publicly to justify such detention and to reject comparisons made by the defendant between his own and the plaintiff's contacts with representatives of foreign governments while opposition members of the Malaysian Parliament, and upon the consequences for democracy in Singapore of the plaintiff's conduct of government.

It then sets out the particulars which number 12 in all. Particulars (viii), which is at the heart of this appeal, is in these terms:

> (viii) The plaintiff has approved the detention of political dissidents at Whitley Road detention centre in order to extract statutory declarations from them by psychological pressure.

Paragraph 12 of the defence contains the defence of justification and repeats the particulars to para 10 of the defence, including particulars (viii).

In the further and better particulars dated 25 November 1988, pursuant to order of court dated 1 November 1988, the defendant sets out the following further and better particulars:

> Under para 10, particulars (viii)
>
> (a) identifying the political dissidents detained at Whitley Road Detention Centre;
> (b) stating which of the said dissidents have made statutory declarations;
> (c) stating the 'psychological pressure' alleged to have been applied to the said dissidents.
>
> (a) The following persons, inter alios, were detained:
>
> | | |
> |---|---|
> | Mr Seow | Chng Suan Tze |
> | Patrick Seong | Wong Souk Yee |
> | Teoh Soh Lung | William Yap Hon Ngian |
> | Tang Lay Lee | Kenneth Tsang |
> | Kevin de Souza | Vincent Cheng |
> | Ng Bee Leng | Tang Fong Har |

(b) The following persons inter alias made statutory declarations or other statements:

Mr Seow	Ng Bee Leng
Patrick Seong	Tang Fong Har
Tang Lay Lee	

(c) The said dissidents were subjected to one or more of the following psychological pressures:

(i) Deprivation of sleep
(ii) Enforced standing
(iii) Excessively cold air-conditioning without proper clothing
(iv) Excessively lengthy interrogations
(v) Deprivation of or undue restrictions on communications with family, friends and/or advisers
(vi) Physical assaults

By order of court dated 7 April 1989, the registrar ordered that particulars (viii) and the further and better particulars given under para 10(viii) to be struck out. It is against this order that the defendant appeals to this court.

Before turning to the essential issues in this appeal, it is useful to set out a number of uncontroversial propositions of law which are unchallenged in this appeal. First, 'a defendant who has made a defamatory comment on a matter of public importance must be entitled to adduce any relevant evidence to show that the comment was fair and in order to do so must be entitled to allege and attempt to prove facts which he contends justify the comment': per Lord Oaksey in *Kemsley* v *Foot*[1] at p 361. Secondly, where the parts of an article are not clearly severable and the sting lies in the totality of its allegations, it is not open to a plaintiff to select the defamatory statements of which he complained, he must take the whole publication as it is. In cases where the trial judge is entitled to see the whole article, the defendant is entitled to plead justification or fair comment as to the whole and to give particulars of those pleas in respect of the whole: see *S & K Holdings Ltd* v *Throgmorton Publications Ltd*[2] and *Polly Peck (Holdings) plc* v *Trelford*.[3] Thirdly, the drastic remedy of striking out a pleading, or a part thereof, cannot be resorted to unless it is plain and obvious that the pleading objected to discloses no arguable case: per Willmer LJ in *Waters* v *Sunday Pictorial Newspapers Ltd*[4] at p 761.

But, despite the mass of authorities and dicta in this field, the issues which arose for necessary decision in this appeal can be shortly stated. The first is whether particulars (viii) relied upon in support of the plea of fair comment is relevant to the issues on the pleadings. The second is whether particulars (viii) relied upon in support of the plea of justification, justifies or is capable of justifying the meaning ascribed by the defendant to the alleged defamatory words.

The first issue

Counsel for the defendant submitted that particulars (viii) is relevant to the defence of fair comment in paras 5 and 10. It was submitted that the reason(s) for the detention of the dissidents and the conditions under which some of them made statutory declarations are clearly capable of forming the material basis upon which the comments are made.

I cannot accede to the submission. The defendant in giving particulars of the facts on which he relies in support of his plea of fair comment, must clearly confine such particulars to those relevant to the issues on the pleadings. Particulars (viii), however, do not go to the issues at all. The thrust of the particulars is the alleged 'approval' of the plaintiff for the detention of the dissidents to extract statutory declarations through psychological pressures. In the further and better particulars, the defendant sets out a list of the names of the dissidents who were detained and who gave statutory declarations and the types of psychological pressures. But the sting of the alleged libel lies in the allegation concerning the plaintiff's conduct in relation to foreign powers when he was member of the Malaysian Parliament in 1963-1965. It is thus plain that the particulars cannot conceivably have any bearing on the alleged libel at all. If, however, the use of the Internal Security Act is a relevant matter, then particulars (ix) more than amply covers the matter in these terms:

> Under the Internal Security act in force in Malaysia in 1965, as under the Internal Security Act in force in Singapore today, the government can approve the detention of any person whose liberty it perceives as threatening to the security of the state. The determination of the security grounds warranting the detention of any person (including political opponents) is not subject to appeal, or to any judicial review on other than procedural grounds. The legislation is drafted so widely that any critic of the government, however upstanding and conscientious, may lawfully be detained.

But to allow particulars (viii) to stand, would be to allow at the trial wide-ranging evidence and discussion on the topic of the plaintiff's alleged approval which has no connection whatever with the alleged libel and would embarrass the fair trial of the action.

The second issue

Counsel for the defendant submitted that the particulars (viii) is relevant to a possible interpretation of the words alleged to be defamatory. This submission is, in my judgment, wholly mistaken. It is well-established that where the defence of justification is pleaded, the defendant is required to spell out the meaning of the words which, if it is their true meaning, he will seek to justify. It will be observed from the further and better particulars given under para 12 that the defendant denied that the words bore or were understood to bear the meaning alleged by the plaintiff; and set out the meaning which the defendant will justify as follows:

> The said words bore and were understood to bear the meaning which appears on the face thereof, namely, that the

plaintiff when a member of the Malaysian Parliament, so conducted himself as to cultivate goodwill and support for the PAP and the aim of a 'Malaysian Malaysia' from establishment and opposition spokespeople in Britain, Australia and New Zealand, and that in 1965 the Malaysian authorities seriously considered detaining the plaintiff.

It clearly follows that the issue on the pleadings is whether the alleged defamatory words are capable of having the meaning which the defendant contends. That alleged meaning relates essentially to the plaintiff's conduct in cultivating the goodwill and support for the PAP and the aim of a 'Malaysian Malaysia' from Britain, Australia and New Zealand and the alleged fact that in 1965 the Malaysian authorities seriously considered detaining the plaintiff. It can be seen that this alleged meaning is totally unrelated to the averment in particulars (viii) that the plaintiff gave 'approval' for the detention of dissidents to extract statutory declarations through psychological pressures. It follows, in my judgment, that particulars (viii) is irrelevant to the issues on the pleadings and must be struck out.

Finally, counsel for the defendant, in his request for further arguments, made the submission that the particulars (viii) could be amended to read as follows:

> The plaintiff has publicly expressed his support for the decision to detain political dissidents at Whitley Road detention centre, and has made expressions of support in the knowledge and/or with reason to suspect that the purpose of their detention was, inter alia, to obtain statutory declarations from them by use of psychological pressure.

But, as can be clearly seen, despite the proposed amendment, the thrust of particulars (viii) remains the same; and it was not made relevant by the redrafting. More importantly, it was incapable of cure by amendment, since the averment in the particulars is one which could not conceivably bear any relation to the issues on the pleadings. Accordingly, leave to amend was not granted.

For these reasons I dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Lee & Lee; Godwin & Co.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Chia Chee Yeen

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 27 OF 1988
COOMARASWAMY J AND CHAO HICK TIN JC
25 MAY 1990

Criminal Law — Murder — Diminished responsibility — Burden of proof — Penal Code (Cap 224, 1985 Ed), s 302

Criminal Procedure — Statements — Statement made under s 122(6) of CPC — Manner of giving warning — Effect of not following the words in s 122(6) — Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6)

The accused was an armskoteman under the supervision of the CSM. The CSM punished the accused for breaches of discipline. The accused returned to the armoury where he withdrew a rifle and two revolvers as well as ammunition. He then confronted the CSM and asked him to change the punishment. The CSM refused. The accused then shot him. He then ran away but was pursued by some of the other soldiers. He turned the rifle on himself and tried to shoot himself but failed.

The accused was arrested and a s 122(6) statement recorded. Prior to recording the statement, the investigator gave the warning with the following words: 'You have been charged with that you may be prosecuted for.' It was not disputed that the statement was given voluntarily. The defence alleged that the error in the warning was a defect which made the whole statement inadmissible.

The accused was charged with murder. His defence was diminished responsibility. An expert was called who stated that he was of the opinion that at the time when he fired the rifle at the CSM, the accused suffered from psychotic depression with personality disorder. However, the expert called by the prosecution was of the opinion that the accused was not suffering from any mental illness which would impair his mental responsibility for his acts, including psychotic depression.

Held, convicting the accused of murder:

(1) The accused was not misled by the slight deviation in the wording of the notice read to him. As the statement was made voluntarily, it was admitted in evidence.

(2) Immediately prior to the incident, there was no evidence of any change of behaviour on the part of the accused.

(3) The accused did not suffer from any psychotic depression on the day of the incident or brief reactive psychosis. The defence of diminished responsibility was rejected.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 9 of 1990.]

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) s 122(6)
Penal Code (Cap 224, 1985 Ed) ss 300, 302

Ang Jin Teck for the Public Prosecutor.
Peter Yap for the accused.

Cur Adv Vult

Chao Hick Tin JC (delivering the judgment of the court): The accused, Chia Chee Yeen is charged before us on the following charge: